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[10191/4055]

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS AND INTERFERENCES

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In re Application of:

Michael ROELLEKE et al.

: Examiner: Tuan C. To

For: SYSTEM FOR GENERATING A  
TRIGGERING SIGNAL FOR  
RESTRAINING MEANS AND METHOD:  
FOR TRIGGERING RESTRAINING  
MEANS IN A VEHICLE

Filed: May 6, 2005

Serial No.: 10/511,969

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Date: 1/23/2009

Signature: AARON C. DEDICH  
(33,865)

REPLY BRIEF TRANSMITTAL

SIR:

Accompanying this Reply Brief Transmittal is a Reply Brief pursuant to 37 C.F.R. § 41.41 for filing in the above-identified patent application, together with two courtesy copies thereof (although not required). The two-month reply brief due date January 26, 2009 since January 25, 2009 is a Sunday), since the Examiner's Answer was mailed on November 25, 2008 ("the Answer").

While no fee is believed to be due, the Commissioner is authorized to charge, as necessary and/or appropriate, any additional and appropriate fees (including any extension fees) or credit any overpayment to Deposit Account No. 11-0600. A duplicate copy of this transmittal letter is enclosed for that purpose.

Dated: 1/23/2009

Respectfully submitted,

By: Gerard A. Messina

Gerard A. Messina  
(Reg. No. 35,942)

KENYON & KENYON LLP  
One Broadway  
New York, New York 10004  
(212) 425-7200  
CUSTOMER NO. 26646

nc  
33,865  
AARON C  
DEDICH



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KENYON & KENYON LLP

One Broadway

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(212) 425-7200

CUSTOMER NO. 26646



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**REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41**

SIR:

In response to the Examiner's Answer mailed on November 25, 2008 ("the Answer") (the two-month response date for which is January 26, 2009 since January 25, 2009 is a Sunday), Appellants submit the present Reply Brief. Although not required, two duplicate copies of this Reply Brief are also being submitted herewith as a courtesy to the Patent Office.

For the reasons more fully set forth below and in the "Appeal Brief Pursuant to 37 C.F.R. § 41.37" ("the Appeal Brief"), it is respectfully submitted that the present rejections should be reversed.

**Finally, the Office is again encouraged to contact the undersigned if there are any questions as to the description of the claimed subject matter, or any other matters.**

## **ARGUMENT**

### **A. THE ANTICIPATION REJECTIONS OF CLAIMS 17, 19, 20, 25, 27, 29, 30, 32, 33, 35, AND 36**

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(a), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Answer and the Office Actions to date do not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flows from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int’f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

#### **Claims 17, 19 and 20**

The following is respectfully submitted as to the anticipation rejections under 35 U.S.C. § 102(a):

On page 8, lines 3 to 7, the Answer indicates that in a critical rotation motion of a vehicle, if the inclination sensor (2) of Achhammer generates a longer term signal for more than a specific time interval, e.g., 1 to 10 minutes, the triggering circuit (3) blocks the activation of the occupant protection system so as to not endanger persons tilting the vehicle back into a normal position or people still in the vehicle. On page 8, lines 7 to 10, the Answer additionally states that for that reason, the triggering circuit (3) in the form of a microcontroller necessarily includes a hold element for determining a period of time during which no triggering signal may be generated in order to block the activation of an occupant protection system. Furthermore, the Answer asserts, on page 8, lines 10 to 14, that it is clear

that when a critical rotational motion of the vehicle has been detected, namely, when the inclination sensor (2) generates a longer term signal for more than a specific time interval, the triggering circuit (3) determines a period of time that a blocking signal is generated to block activation of the occupant protection system.

The feature of claim 17 of the present application, relating to the above-mentioned assertions reads as follows: “the circuit [generating a triggering signal for a restraining unit] includes at least one hold element determining a *period of time* during which no triggering signal may be generated when a critical *rotational motion* of the vehicle has been detected.” Emphasis and bracketed text added.

First of all, Achhammer states the following in column 5, lines 30 to 44:

If the inclination switch 2 generates a longer term signal, in other words, for more than a specific time interval of, for example, 1 to 10 minutes, the triggering circuit 3 interprets an output signal indicating vehicle tilting as **a stable tilted vehicle state**, for example, a position on its side or a position on its roof. In this condition, the rate-of-rotation sensor 1 **no longer signals rotary movement**. Then, the triggering circuit 3 blocks the generation of an activation signal even should the output signal of the rate-of-rotation sensor 1 rise again. Such subsequent rotary movement is interpreted as a deliberately exerted tilting back movement for restoring the motor vehicle to the normal position. Thus, activation of the occupant protection system is blocked in order to prevent endangering the persons participating in the tilting back movement and/or still located in the vehicle.

Thus, in this case, the inclination switch (2) of Achhammer has not detected any *rotational motion* of the vehicle, but rather a *constant rotational displacement*. If the vehicle were moving about an axis, the rate-of-rotation sensor (1) would signal this movement. Also, the triggering circuit (3) of Achhammer does not determine a period of time in which no activation signal may be generated, but simply blocks the generation of the activation signal in response to the duration of the signal of the inclination switch (2) exceeding a limit value. Achhammer makes no mention whatsoever of how long the triggering circuit (3) blocks the activation signal or when, if ever, the triggering circuit (3) unblocks the activation signal again.

Accordingly, Achhammer does not identically disclose (or even suggest) at least the above-mentioned feature of claim 17, and therefore Achhammer does not anticipate claim 17 and its dependent claims 19 and 20.

Thus, claim 17 relates to a “system for generating a triggering signal for a restraining unit in a vehicle,” including the feature of “a circuit generating the triggering signal for the restraining unit,” ... in which the circuit includes “*at least one hold element determining a period of time during which no triggering signal may be generated when a critical rotational motion of the vehicle has been detected.*”

Also, as explained in the Appeal Brief, nothing in the Achhammer reference identically discloses (or even suggests) a circuit that includes at least one hold element *determining a period of time* during which no triggering signal may be generated when a critical rotational motion of the vehicle has been detected, as provided for in the context of claim 17. The Achhammer reference merely refers to a triggering circuit that blocks activation signals *for an unspecified amount of time*. Specifically, the Achhammer reference only indicates that the triggering circuit blocks activation signals when a vehicle remains in one position for an amount of time exceeding a preset threshold value. (Achhammer, col. 3, lines 18 to 26).

However, there is no indication at all that the triggering circuit of the Achhammer reference makes a determination of a period of time during which no triggering signal may be generated. Instead, the triggering circuit of Achhammer makes no such determination, but merely blocks activation signals when a vehicle reaches “a stable, tilted position.” (Achhammer, col. 4, line 20). *Thus, the Achhammer reference does not identically disclose (nor even suggest) a circuit that includes at least one hold element determining a period of time during which no triggering signal may be generated, as provided for in the context of claim 17.*

Further, nothing in the Achhammer reference identically discloses (or even suggests) a circuit that includes at least one hold element determining a period of time during which no triggering signal may be generated when a critical rotational motion of the vehicle has been detected, as provided for in the context of claim 17. As explained above, the Achhammer reference merely indicates that a triggering circuit blocks activation signals *when the vehicle remains in one position for an amount of time exceeding a preset threshold value*, and that the triggering circuit blocks activation signals only when a “motor vehicle has been in a tilted position over a lengthy period of time” (Achhammer, col. 3, lines 23 to 24). Only after such “a stable, tilted vehicle state” has been reached, does the triggering circuit blocks activation signals. (Achhammer, col. 5, lines 28 to 44). *Thus, the Achhammer reference does not disclose the blocking of activation signals when a critical rotational motion has been*

*detected, but only indicates blocking activation signals after a vehicle comes to rest.*

Therefore, the Achhammer reference does not identically disclose (or even suggest) a circuit that includes at least one hold element determining a period of time during which no triggering signal may be generated when a critical rotational motion of the vehicle has been detected, as provided for in the context of claim 17.

Accordingly, it is respectfully submitted that claim 17 is allowable for at least the reasons provided above. Claims 19 and 20 depend from claim 17 and are therefore allowable for at least the same reasons as claim 17.

Withdrawal of the rejections of these claims is therefore respectfully requested.

**Claims 25, 27, 29, 30, 32, 33, 35, and 36**

Claim 25 includes the above-discussed feature like that of claim 17, and therefore Achhammer does not anticipate claim 25, nor its dependent claims 27, 29, 30, 32, 33, 35 and 36.

In particular, claim 25, includes features similar to those of claim 17, and relates to a “method for triggering a restraining unit in a vehicle,” including the feature of “generating the triggering signal for the restraining unit,” in which “*in the event of an impact, the restraining unit is blocked from being triggered for a selected period of time  $t_{stop}$  when a critical rotational motion exists.*”

Also, as explained above as to claim 17, the Achhammer reference does not identically disclose (or even suggest) that the restraining unit is blocked from being triggered for a selected period of time  $t_{stop}$  when a critical rotational motion exists, as provided for in the context of claim 25. Specifically, the triggering circuit of the Achhammer reference *does not select a period of time  $t_{stop}$  during which to block signals to the restraining unit.* Further, the triggering circuit of the Achhammer reference *does not disclose blocking the restraining unit from being triggered when a critical rotational motion exists,* but only indicates blocking the restraining unit after a vehicle comes to rest. Thus, the Achhammer reference does not identically disclose (nor even suggest) that the restraining unit is blocked from being triggered for a selected period of time  $t_{stop}$  when a critical rotational motion exists, as provided for in the context of claim 25.

Accordingly, it is respectfully submitted that claim 25 is allowable for at least the reasons provided above. Claims 27, 29, 30, 32, 33, 35, and 36 depend from claim 25 and are therefore allowable for at least the same reasons as claim 25.

Withdrawal of the rejections of these claims is therefore respectfully requested.

**B. THE OBVIOUSNESS REJECTIONS OF  
CLAIMS 21 TO 24, 28, 31, AND 34**

**Claims 21 to 24**

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a prima facie case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Also, as clearly indicated by the Supreme Court in KSR, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. See KSR Int’l Co. v. Teleflex, Inc., 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396.

Claims 21 to 24 depend from claim 17. As explained above, the Achhammer reference does not disclose or even suggest all of the features of claim 17. Since the Watson reference does not cure the critical deficiencies of the Achhammer reference, the proposed combination of the Achhammer reference and the Watson reference cannot disclose or suggest all of the features of claim 17 or its dependent claims 21 to 24. Therefore, it is respectfully submitted that claims 21 to 24 are allowable for essentially the same reasons provided above as to their base claim.



Withdrawal of the obviousness objections of these claims is therefore respectfully requested.

**Claims 28, 31, and 34**

Claims 28, 31, and 34 depend from claim 25. As explained above, the Achhammer reference does not disclose or even suggest all of the features of claim 25. Since the Watson reference does not cure the critical deficiencies of the Achhammer reference, the proposed combination of the Achhammer reference and the Watson reference cannot disclose or suggest all of the features of claim 25, or its dependent claims 28, 31, and 34. Therefore, it is respectfully submitted that claims 28, 31, and 34 are allowable for essentially the same reasons provided above as to their base claim.

Withdrawal of the obviousness objections of these claims is therefore respectfully requested.

As further regards all of the obviousness rejections of the claims, and as previously explained, the presently claimed subject matter provides the benefit of refining the criterion for triggering the restraining arrangement provided for impact situations in vehicles. Information about the possible occurrence or existence of a rotational motion of the vehicle is considered in the decision about triggering these restraining arrangements. (See specification, page 2, lines 17 to 22).

In the event of an impact situation the restraining arrangements are blocked for a defined period of time  $t_{stop}$  when a critical rotational motion of the vehicle has been recognized. The circuit according to the presently claimed subject matter includes at least one hold element for this purpose, with which period of time  $t_{stop}$  in which no triggering signal may be generated, is determined. (See specification, page 3, lines 18 to 25).

Accordingly, the claimed subject matter is not obvious since its benefits are evidence of non-obviousness as to the reference as applied.

As further regards the obviousness rejections of the claims, it is respectfully submitted that a proper *prima facie* case has not been made in the present case for obviousness, since the Answer and the Office Actions to date never made any proper findings, such as, for example, regarding in any way whatsoever what a person having ordinary skill in the art would have been at the time the claimed subject matter of the present application was made. (See *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998) (the “factual predicates underlying” a *prima facie* “obviousness determination include the scope and content of the

prior art, the differences between the prior art and the claimed invention, and the level of ordinary skill in the art”)). It is respectfully submitted that the proper test for showing obviousness is what the “combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art”, and that the Patent Office must provide particular findings in this regard — the evidence for which does not include “broad conclusory statements standing alone”. (*See In re Kotzab*, 55 U.S.P.Q. 2d 1313, 1317 (Fed. Cir. 2000) (citing *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1618 (Fed. Cir. 1999) (obviousness rejections reversed where no findings were made “concerning the identification of the relevant art”, the “level of ordinary skill in the art” or “the nature of the problem to be solved”))). It is respectfully submitted that there has been no such proper showings by the Answer, the Office Actions to date or by the Advisory Action.

In fact, the present lack of any of the required factual findings forces both Appellants and any Appeals Board to resort to unwarranted speculation to ascertain exactly what facts underly the present obviousness rejections. The law mandates that the allocation of the proof burdens requires that the Patent Office provide the factual basis for rejecting a patent application under 35 U.S.C. § 103. (*See In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016, 154 U.S.P.Q. 173, 177 (C.C.P.A. 1967))). In short, the Examiner bears the initial burden of presenting a proper prima facie unpatentability case — which has not been met in the present case. (*See In re Oetiker*, 977 F.2d 1443, 1445, 24, U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992)).

Accordingly, claims 21 to 24, 28, 31, and 34 are allowable.

**CONCLUSION**

For at least the reasons indicated above and in the Appeal Brief, Appellants respectfully submit that the rejections of claims 17, 19 to 25 and 27 to 36 set forth in the Final Office Action should be reversed.

Dated: \_\_\_\_\_

1/23/2009

Respectfully submitted,

By: \_\_\_\_\_

Gerard A. Messina  
(Reg. No. 35,952)

KENYON & KENYON LLP  
One Broadway  
New York, New York 10004  
(212) 425-7200

Reg. No. 33,865  
Aaron C. O'EDITHA)

**CUSTOMER NO. 26646**



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## **ARGUMENT**

### **A. THE ANTICIPATION REJECTIONS OF CLAIMS 17, 19, 20, 25, 27, 29, 30, 32, 33, 35, AND 36**

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#### **Claims 17, 19 and 20**

The following is respectfully submitted as to the anticipation rejections under 35 U.S.C. § 102(a):

On page 8, lines 3 to 7, the Answer indicates that in a critical rotation motion of a vehicle, if the inclination sensor (2) of Achhammer generates a longer term signal for more than a specific time interval, e.g., 1 to 10 minutes, the triggering circuit (3) blocks the activation of the occupant protection system so as to not endanger persons tilting the vehicle back into a normal position or people still in the vehicle. On page 8, lines 7 to 10, the Answer additionally states that for that reason, the triggering circuit (3) in the form of a microcontroller necessarily includes a hold element for determining a period of time during which no triggering signal may be generated in order to block the activation of an occupant protection system. Furthermore, the Answer asserts, on page 8, lines 10 to 14, that it is clear

that when a critical rotational motion of the vehicle has been detected, namely, when the inclination sensor (2) generates a longer term signal for more than a specific time interval, the triggering circuit (3) determines a period of time that a blocking signal is generated to block activation of the occupant protection system.

The feature of claim 17 of the present application, relating to the above-mentioned assertions reads as follows: “the circuit [generating a triggering signal for a restraining unit] includes at least one hold element determining a *period of time* during which no triggering signal may be generated when a critical *rotational motion* of the vehicle has been detected.” Emphasis and bracketed text added.

First of all, Achhammer states the following in column 5, lines 30 to 44:

If the inclination switch 2 generates a longer term signal, in other words, for more than a specific time interval of, for example, 1 to 10 minutes, the triggering circuit 3 interprets an output signal indicating vehicle tilting as a **stable tilted vehicle state**, for example, a position on its side or a position on its roof. In this condition, the rate-of-rotation sensor 1 **no longer signals rotary movement**. Then, the triggering circuit 3 blocks the generation of an activation signal even should the output signal of the rate-of-rotation sensor 1 rise again. Such subsequent rotary movement is interpreted as a deliberately exerted tilting back movement for restoring the motor vehicle to the normal position. Thus, activation of the occupant protection system is blocked in order to prevent endangering the persons participating in the tilting back movement and/or still located in the vehicle.

Thus, in this case, the inclination switch (2) of Achhammer has not detected any *rotational motion* of the vehicle, but rather a *constant rotational displacement*. If the vehicle were moving about an axis, the rate-of-rotation sensor (1) would signal this movement. Also, the triggering circuit (3) of Achhammer does not determine a period of time in which no activation signal may be generated, but simply blocks the generation of the activation signal in response to the duration of the signal of the inclination switch (2) exceeding a limit value. Achhammer makes no mention whatsoever of how long the triggering circuit (3) blocks the activation signal or when, if ever, the triggering circuit (3) unblocks the activation signal again.

Accordingly, Achhammer does not identically disclose (or even suggest) at least the above-mentioned feature of claim 17, and therefore Achhammer does not anticipate claim 17 and its dependent claims 19 and 20.

Thus, claim 17 relates to a “system for generating a triggering signal for a restraining unit in a vehicle,” including the feature of “a circuit generating the triggering signal for the restraining unit,” ... in which the circuit includes “*at least one hold element determining a period of time during which no triggering signal may be generated when a critical rotational motion of the vehicle has been detected.*”

Also, as explained in the Appeal Brief, nothing in the Achhammer reference identically discloses (or even suggests) a circuit that includes at least one hold element *determining a period of time* during which no triggering signal may be generated when a critical rotational motion of the vehicle has been detected, as provided for in the context of claim 17. The Achhammer reference merely refers to a triggering circuit that blocks activation signals *for an unspecified amount of time*. Specifically, the Achhammer reference only indicates that the triggering circuit blocks activation signals when a vehicle remains in one position for an amount of time exceeding a preset threshold value. (Achhammer, col. 3, lines 18 to 26).

However, there is no indication at all that the triggering circuit of the Achhammer reference makes a determination of a period of time during which no triggering signal may be generated. Instead, the triggering circuit of Achhammer makes no such determination, but merely blocks activation signals when a vehicle reaches “a stable, tilted position.” (Achhammer, col. 4, line 20). *Thus, the Achhammer reference does not identically disclose (nor even suggest) a circuit that includes at least one hold element determining a period of time during which no triggering signal may be generated, as provided for in the context of claim 17.*

Further, nothing in the Achhammer reference identically discloses (or even suggests) a circuit that includes at least one hold element determining a period of time during which no triggering signal may be generated when a critical rotational motion of the vehicle has been detected, as provided for in the context of claim 17. As explained above, the Achhammer reference merely indicates that a triggering circuit blocks activation signals *when the vehicle remains in one position for an amount of time exceeding a preset threshold value*, and that the triggering circuit blocks activation signals only when a “motor vehicle has been in a tilted position over a lengthy period of time” (Achhammer, col. 3, lines 23 to 24). Only after such “a stable, tilted vehicle state” has been reached, does the triggering circuit blocks activation signals. (Achhammer, col. 5, lines 28 to 44). *Thus, the Achhammer reference does not disclose the blocking of activation signals when a critical rotational motion has been*

detected, but only indicates blocking activation signals after a vehicle comes to rest.

Therefore, the Achhammer reference does not identically disclose (or even suggest) a circuit that includes at least one hold element determining a period of time during which no triggering signal may be generated when a critical rotational motion of the vehicle has been detected, as provided for in the context of claim 17.

Accordingly, it is respectfully submitted that claim 17 is allowable for at least the reasons provided above. Claims 19 and 20 depend from claim 17 and are therefore allowable for at least the same reasons as claim 17.

Withdrawal of the rejections of these claims is therefore respectfully requested.

#### **Claims 25, 27, 29, 30, 32, 33, 35, and 36**

Claim 25 includes the above-discussed feature like that of claim 17, and therefore Achhammer does not anticipate claim 25, nor its dependent claims 27, 29, 30, 32, 33, 35 and 36.

In particular, claim 25, includes features similar to those of claim 17, and relates to a “method for triggering a restraining unit in a vehicle,” including the feature of “generating the triggering signal for the restraining unit,” in which “*in the event of an impact, the restraining unit is blocked from being triggered for a selected period of time  $t_{stop}$  when a critical rotational motion exists.*”

Also, as explained above as to claim 17, the Achhammer reference does not identically disclose (or even suggest) that the restraining unit is blocked from being triggered for a selected period of time  $t_{stop}$  when a critical rotational motion exists, as provided for in the context of claim 25. Specifically, the triggering circuit of the Achhammer reference *does not select a period of time  $t_{stop}$  during which to block signals to the restraining unit.* Further, the triggering circuit of the Achhammer reference *does not disclose blocking the restraining unit from being triggered when a critical rotational motion exists*, but only indicates blocking the restraining unit after a vehicle comes to rest. Thus, the Achhammer reference does not identically disclose (nor even suggest) that the restraining unit is blocked from being triggered for a selected period of time  $t_{stop}$  when a critical rotational motion exists, as provided for in the context of claim 25.



Accordingly, it is respectfully submitted that claim 25 is allowable for at least the reasons provided above. Claims 27, 29, 30, 32, 33, 35, and 36 depend from claim 25 and are therefore allowable for at least the same reasons as claim 25.

Withdrawal of the rejections of these claims is therefore respectfully requested.

**B. THE OBVIOUSNESS REJECTIONS OF  
CLAIMS 21 TO 24, 28, 31, AND 34**

**Claims 21 to 24**

In rejecting a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a prima facie case of obviousness. In *re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In *re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In *re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In *re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In *re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Also, as clearly indicated by the Supreme Court in *KSR*, it is “important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements” in the manner claimed. See *KSR Int’l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that “rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.*, at 1396.

Claims 21 to 24 depend from claim 17. As explained above, the Achhammer reference does not disclose or even suggest all of the features of claim 17. Since the Watson reference does not cure the critical deficiencies of the Achhammer reference, the proposed combination of the Achhammer reference and the Watson reference cannot disclose or suggest all of the features of claim 17 or its dependent claims 21 to 24. Therefore, it is respectfully submitted that claims 21 to 24 are allowable for essentially the same reasons provided above as to their base claim.

Withdrawal of the obviousness objections of these claims is therefore respectfully requested.

### **Claims 28, 31, and 34**

Claims 28, 31, and 34 depend from claim 25. As explained above, the Achhammer reference does not disclose or even suggest all of the features of claim 25. Since the Watson reference does not cure the critical deficiencies of the Achhammer reference, the proposed combination of the Achhammer reference and the Watson reference cannot disclose or suggest all of the features of claim 25, or its dependent claims 28, 31, and 34. Therefore, it is respectfully submitted that claims 28, 31, and 34 are allowable for essentially the same reasons provided above as to their base claim.

Withdrawal of the obviousness objections of these claims is therefore respectfully requested.

As further regards all of the obviousness rejections of the claims, and as previously explained, the presently claimed subject matter provides the benefit of refining the criterion for triggering the restraining arrangement provided for impact situations in vehicles. Information about the possible occurrence or existence of a rotational motion of the vehicle is considered in the decision about triggering these restraining arrangements. (See specification, page 2, lines 17 to 22).

In the event of an impact situation the restraining arrangements are blocked for a defined period of time  $t_{stop}$  when a critical rotational motion of the vehicle has been recognized. The circuit according to the presently claimed subject matter includes at least one hold element for this purpose, with which period of time  $t_{stop}$  in which no triggering signal may be generated, is determined. (See specification, page 3, lines 18 to 25).

Accordingly, the claimed subject matter is not obvious since its benefits are evidence of non-obviousness as to the reference as applied.

As further regards the obviousness rejections of the claims, it is respectfully submitted that a proper *prima facie* case has not been made in the present case for obviousness, since the Answer and the Office Actions to date never made any proper findings, such as, for example, regarding in any way whatsoever what a person having ordinary skill in the art would have been at the time the claimed subject matter of the present application was made. (See *In re Rouffet*, 47 U.S.P.Q.2d 1453, 1455 (Fed. Cir. 1998) (the “factual predicates underlying” a *prima facie* “obviousness determination include the scope and content of the

prior art, the differences between the prior art and the claimed invention, and the level of ordinary skill in the art’)). It is respectfully submitted that the proper test for showing obviousness is what the “combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art”, and that the Patent Office must provide particular findings in this regard — the evidence for which does not include “broad conclusory statements standing alone”. (See *In re Kotzab*, 55 U.S.P.Q. 2d 1313, 1317 (Fed. Cir. 2000) (citing *In re Dembiczak*, 50 U.S.P.Q.2d 1614, 1618 (Fed. Cir. 1999) (obviousness rejections reversed where no findings were made “concerning the identification of the relevant art”, the “level of ordinary skill in the art” or “the nature of the problem to be solved”))). It is respectfully submitted that there has been no such proper showings by the Answer, the Office Actions to date or by the Advisory Action.

In fact, the present lack of any of the required factual findings forces both Appellants and any Appeals Board to resort to unwarranted speculation to ascertain exactly what facts underly the present obviousness rejections. The law mandates that the allocation of the proof burdens requires that the Patent Office provide the factual basis for rejecting a patent application under 35 U.S.C. § 103. (See *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984) (citing *In re Warner*, 379 F.2d 1011, 1016, 154 U.S.P.Q. 173, 177 (C.C.P.A. 1967))). In short, the Examiner bears the initial burden of presenting a proper *prima facie* unpatentability case — which has not been met in the present case. (See *In re Oetiker*, 977 F.2d 1443, 1445, 24, U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992)).

Accordingly, claims 21 to 24, 28, 31, and 34 are allowable.

**CONCLUSION**

For at least the reasons indicated above and in the Appeal Brief, Appellants respectfully submit that the rejections of claims 17, 19 to 25 and 27 to 36 set forth in the Final Office Action should be reversed.

Dated: \_\_\_\_\_

1/23/2009

Respectfully submitted,

By: \_\_\_\_\_

Gerard A. Messina  
(Reg. No. 35,952)

KENYON & KENYON LLP  
One Broadway  
New York, New York 10004  
(212) 425-7200

**CUSTOMER NO. 26646**

*reg no. 33,865*  
*Aaron C. O'Neil*